

DOCUMENT RESUME

08142 - [C3428555]

**[Protest concerning Below-Cost Bid]. B-193296. December 6, 1978.
2 pp.**

**Decision re: Radionics, Inc.; by Milton J. Socclar, General
Counsel.**

Contact: Office of the General Counsel: Procurement Law I.

**Organization Concerned: Department of the Army: Fort Monmouth,
NJ; ABL General Systems Corp.**

**Authority: 54 Comp. Gen. 66. 54 Comp. Gen. 499. 54 Comp. Gen.
715. B-188364 (1977). B-187404 (1977). B-185896 (1976).**

**Defense Acquisition Regulation 1-904.1. Defense Acquisition
Regulation 1-311.**

**A protester contended that the apparent low bidder was
not responsible because its bid price was unreasonably low. The
protest was dismissed since acceptance of a below-cost bid is
not legally objectionable, and GAO does not review affirmative
determinations of responsibility except under circumstances
which did not apply in this case. (H7W)**

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

8535**FILE: B-193296****DATE: December 6, 1978****MATTER OF: Radionics, Inc.****DIGEST:**

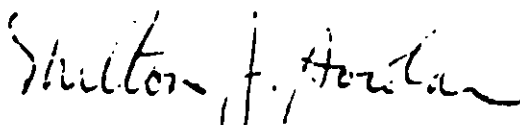
1. Acceptance of below-cost bid is not legally objectionable.
2. Protest of affirmative determination of low bidder's responsibility is not reviewed by GAO absent allegations of fraud or misapplication of definitive responsibility criteria, neither of which are present here.

Radionics, Inc. (Radionics) protests award to ABL General Systems Corporation (ABL), the apparent low bidder, under invitation for bids (IFB) No. DAAB07-78-B-1193, issued by the United States Army, Fort Monmouth, N.J. Radionics contends that ABL should be regarded as a nonresponsible bidder because it submitted an unreasonably low price.

The acceptance of a below-cost bid is not legally objectionable. See IMBA, Incorporated, B-188364, B-187404, November 9, 1977, 77-2 CPD 356; Futuronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. However, before a bid may be accepted, the contracting officer must determine that the bidder is responsible. See Defense Acquisition Regulation (DAR) § 1-904.1. The protest is in effect an objection to an affirmative determination of ABL's responsibility. This Office does not review protests which question such determinations of responsibility unless either fraud on the part of the procuring official is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64 and Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Neither exception is applicable here.

We point out that, although a contracting officer may accept an unusually low bid, the practice of "buying in," that is, submitting a below cost bid with expectation of recouping potential losses through follow-on procurements, is discouraged by DAR § 1-311. Pursuant to that regulatory provision, contracting officers are required to monitor the situation closely so that the amounts "excluded in the development of the original contract price are not recovered in the pricing of change orders or [through] follow-on procurements subject to cost analysis."

The protest is dismissed.



Milton J. Socolar
General Counsel